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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation	))))))	MM Docket N. 92-266

DATA ANALYSIS OF CONSUMER FEDERATION OF AMERICA

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I. INTRODUCTION

The responses by cable systems to the survey distributed by the Federal Communications Commission provide strong substantiation for the fundamental points that CFA made in its initial and reply comments in this proceeding. These data make clear that truly competitive systems -- those which face head-to-head competition from rivals offering similar services to a large segment of the relevant market -- charge approximately 30 to 50 percent less than monopoly cable systems.

The data also show that the other types of systems Congress identified as competitive for purposes of excusing them from regulation -- municipal systems and low penetration rate systems -- are not representative of the vast majority of cable systems. Their pricing patterns are dictated by unique characteristics and should not be used as guidelines for pricing of the overwhelming majority of monopoly systems.

Finally, the data make clear that the very small number and unique characteristics of the competitive systems render it impossible for the Commission to rely on survey data to concoct a quasi-cost approach, as proposed by the cable industry, to rate setting.

Based on these observations, we believe that the Commission must adopt a formulaic approach as proposed by CFA, while developing a cost-based approach and continually re-examining the cable market to assess whether adequate competition has developed to allow a change in regulation. The following analysis describes the empirical evidence in the survey data that supports these conclusions.

II. HEAD-TO-HEAD COMPETITION

Cable systems subject to direct head-to-head competition have exhibited a dramatically different pricing pattern than monopoly systems. This is true of all systems and those that have provided price data for both 1986 and 1992. Therefore, the cable industry's assertions about so-called greenmail are totally false. In fact, long term competitors -- i.e., those who have been in business at least long enough to provide prices for 1986 and 1992 -- have virtually the same prices in 1992 as other competitive cable systems. In short, real head-to-head competition serves the consumer interest and Congress did well to stress this type of competition and attempt to foster its expansion.

Monthly subscription charges for basic service, defined as the basic tier or the first two tiers (to take account of recent retiering), are considerably higher on monopoly systems than where head-to-head competition exists. As CFA estimated based on previously published data, the price difference between competitive and monopoly systems is between 30 and 50 percent, as the following table shows. Head-to-head competitive systems charge about $.60 per channel in the first tier and about $.50 in the first two tiers combined. This is true for systems which provided prices for 1986 and those which did not.

MONTHLY RECURRING CHARGES PER CHANNEL

	ALL SYSTEMS		SYSTEMS WITH 1986 PRICES	
	1ST TIER	1ST & 2ND TIERS	1ST TIER	1ST & 2ND TIERS
MONOPOLY	$.88	.77	.81	.69
HEAD-TO-HEAD COMPETITION	.65	.50	.61	.49

In contrast, monopoly systems charge over $.80 in the first tier and close to $.70 in the first two tiers combined. Age of system apparently drives down charges in both sets of systems, as we explained in our initial comments, because penetration rate increases spread fixed costs over more subscribers.

The differences between competitive and monopoly systems in pricing is not confined to monthly subscription charges, as the following table shows.

OTHER CHARGES FOR CABLE SERVICE

	MONOPOLY	HEAD-TO-HEAD COMPETITION
INSTALLATION	$33.42	28.76
RECONNECTION	26.69	24.49
CONVERT BOX	2.74	2.02
REMOTE	3.30	2.61
ADDED OUTLET	4.16	3.81

Competitive systems also charge less for other components of service. These differences are in the range of 15 percent.

The competitive systems not only have much lower prices today, but they have also raised their prices less since 1986, as the following table shows.

CHANGES IN SUBSCRIBER RATES SINCE DEREGULATION

	1986			1992		
	# OF CHNLS	$/MNTH	$/ CHNL	# OF CHNLS	$/MNTH	$/ CHNL
MONOPOLY SYSTEMS						
TIER ONE	19.87	10.21	.51	20.95	14.24	.68
TIER TWO	11.79	5.94	.50	15.25	7.13	.47
TIER 1&2	24.03	12.21	.51	28.90	19.94	.69
COMPETITIVE SYSTEMS						
TIER ONE	22.76	9.94	.44	23.69	12.54	.63
TIER TWO	9.70	5.14	.53	19.78	7.44	.38
TIER 1&2	25.27	11.59	.47	36.10	17.69	.49

In 1986 the first two tiers on monopoly and competitive systems were about the same size and the competitive systems were about 8 percent less expensive. By 1992, the first two tiers on the competitive systems were over seven channels larger. The price difference had grown to almost 30 percent. The increase in size and increase in price difference is also evident in each of the first two tiers separately. The price increase in the monopoly systems was about 33 percent for the first tier and the first two tiers combined. In the competitive systems it was 21 percent in the first tier and only 4 percent for the first two tiers combined.

In short, the competitive systems started with lower prices and have increased their price advantage dramatically since deregulation.

III. LOW PENETRATION RATE SYSTEMS

In contrast to the head-to-head competition systems, the low penetration rate systems tend to have much higher prices. The average for both 1986 and 1992 is close to the monopoly systems. The theoretical argument that low penetration rates should reflect competition and that competition should discipline pricing patterns is not supported by the data. The low penetration rate systems are an odd lot of high cost systems.

First, low penetration itself is a cause of high cost, since there are fewer units over which to spread fixed costs. Second, the low penetration rate systems are made up of two distinct groups.

An examination of all systems shows that a much higher proportion of low penetration systems are less than ten years old. The older groups is radically different from the younger groups and quite different from the monopoly and the competitive systems on key cost causative characteristics, as the following table shows.

COST CAUSATIVE CHARACTERISTICS OF DIFFERENT TYPES OF SYSTEMS

	MONOPOLY	HEAD-TO-HEAD COMPETITION	LOW PENETRATION	FRANCHISE
SYSTEMS MORE THAN TEN <u>YEARS OLD</u>				
NUMBER IN SURVEY	429	23	24	6
HOUSEHOLDS PASSED	22519	29333	57636	6323
SUBSCRIBERS	11373	8649	21338	3189
PERCENT OF CABLE BELOW GROUND	22	22	9	21
MILES OF CABLE IN AREA	206	209	385	76
NUMBER OF HEADENDS IN FRANCHISE AREA	1.33	1.35	1.00	1.00
SYSTEMS LESS THAN TEN <u>YEARS OLD</u>				
NUMBER IN SURVEY	526	21	47	7
HOUSEHOLDS PASSED	30053	21147	17639	2184
SUBSCRIBERS	11442	8264	4841	1115
PERCENT OF CABLE BELOW GROUND	29	28	22	8
MILES OF CABLE IN AREA	214	164	98	40
NUMBER OF HEADENDS IN FRANCHISE AREA	1.12	1.05	1.00	1.00

Within both the older and younger group, competitive and monopoly systems are much more similar in terms of households passed, subscribers, density, type of wiring and number of headends. These are the cost-causative characteristics that underlay the declining cost nature of the industry. Older low penetration systems are huge. Younger systems are small, with little wire.

Thus, while Congress identified these systems as competitive for purposes of exclusion from regulation, it would be a mistake to use them as a benchmark pricing standard for monopoly systems. Their high cost characteristics would result in overcharging the vast majority of cable service subscribers.

Moreover, it is highly unlikely that monopoly systems will evolve toward low penetration rate systems. Quite the contrary is the case. Because these systems are young, they are likely to evolve toward the characteristics of monopoly systems. The pool of such systems is likely to shrink, making their use as a comparative pricing standard ever more problematic.

While Congress may have assumed these low penetration systems would have attributes similar to head-to-head competitive systems, this assumption was based on no empirical evidence (i.e., neither the House or Senate bills, Committee Reports or Conference Report cite an empirical basis for this definition).

The data submitted in this proceeding make it clear that low penetration systems do not have competive characteristics and therefore cannot provide the surrogate for competitive market pricing that Congress directed the Commission to develop.

IV. FRANCHISE AUTHORITY SYSTEMS

Franchise authority operated (i.e., municipal) systems are the exact opposite of the low penetration rate systems. They tend to have much lower prices, even somewhat lower than head-to-head competitive systems.

As described in the previous table, they are quite small in numbers of subscribers, wiring, headends, etc.

While Congress identified these systems as competitive for purposes of exclusion from regulation, it would be a mistake to use them as a pricing standard for monopoly systems. Their ownership distinction yields low cost characteristics that are not representative of the vast majority of monopoly cable systems. Therefore, their use as a comparative standard is likely to result in undercharging of cable subscribers.

Moreover, most cable systems are not likely to evolve toward the franchise systems. They are unlikely to change their form of ownership. With ninety percent of the country already covered by cable service, a sharp change in the ownership pattern in the industry is not likely.

V. THE PROBLEMS WITH QUASI-COST SURVEY EVIDENCE

Throughout this analysis of the data we have stressed the differences between cable system types as an obstacle to utilizing the survey data as the primary basis for establishing a regulatory benchmark. We also believe that the unaudited, incomplete nature of the data creates a problem. The following table crystallizes many of our concerns.

BASIC MONTHLY RATES (1ST TIER) FOR VARIOUS CATEGORIES OF SYSTEMS ACCORDING TO LENGTH OF OPERATION AND TYPE OF DATA PROVIDED

	MONOPOLY		HEAD-TO-HEAD COMPETITION		LOW PENETRATION	
	# OF AREAS	PRICE	# OF AREAS	PRICE	# OF AREAS	PRICE
ALL AREAS	966	$14.97	43	$13.69	73	$15.56
NOT PROVIDING PROGRAMMING IN 1986	169	$16.04	14	$15.16	30	$15.88
PROVIDING PROGRAMMING, BUT NO 86 PRICE	87	16.54	2	19.28	8	15.73
PROVIDING PROGRAMMING, WITH 86 PRICE	465	14.39	26	12.54	28	16.03
NO RESPONSE TO PROGRAMMING QUESTION (PRIMARILY 2ND SERVICE TERRITORIES)	242	14.97	1	11.95	7	12.08

The table compares basic monthly charges (first tier) for each of the three types of cable systems (monopoly, head-to-head competitive and low penetration rate). It shows the rates for those who were not providing programming in 1986, those who were, but did not report their 1986 prices, and those who were and did report their 1986 prices.

First, note that many more of the monopoly and low penetration rate systems failed to report 1986 prices, even though they were providing programming. Only 4 percent of the competitive systems failed to provide prices (2 out of 28) compared to 15 percent of the monopoly (87 out of 552) and almost 25 percent of the low penetration rate systems (8 out of 36). This raises serious doubts about the data, especially if 1986 is to be used as a starting point for calculating allowable price increases.

Second, the monopoly and competitive systems that did report 1986 prices, had much lower prices in 1992. The opposite is true for low penetration rate systems. This reinforces the concern about the usefulness of the data.

Third, on average, the systems reporting no service in 1986 have considerably higher prices for monopoly and competitive systems, but slightly lower prices for low penetration rate systems. This suggests that there is no greenmail -- instead, long term competition yields lower rates. It also reinforces the distinction that must be made between types of systems, if the Commission chooses to rely on prices in competitive systems, without directly analyzing costs.

Finally, for many of the second franchise areas the respondents did not state whether they were providing services and they did not provide 1986 prices. What this means for the usefulness of the data is difficult to say. While the non-respondents for monopoly systems have the same prices, this is not true for the other two categories of systems.

VI. CONCLUSION

The data corroborate CFA's previous recommendation to the Commission. Head-to-head competition is in the consumer's interest. It produces lower rates and is stable over the long term. It is also too infrequent to provide a sound comparative standard for rates in the immediate future. The other categories of systems defined as competitive for purposes of being subject to regulation are not only too infrequent to be used as a comparative pricing standard, they are also unrepresentative of the vast majority of cable systems. Since these systems are so atypical, and benchmark rates challenges must be allowed on both sides, use of these systems as a comparative cost standard would result in excessive challenges and an unworkable regulatory model.

Respectfully submitted,

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